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***Note changes made by the
Court to page 7***

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17
18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20
21 ALTINEX, INC.

CASE NO.: SACV 12:1068 JST(JPRx)

22
23 Plaintiff.

**STIPULATED PROTECTIVE
ORDER**

24 vs.

25 EVERVUE USA, INC., and DOES 1 through
26 10, inclusive,

27 Defendants.
28

Stipulated Protective Order

1
2 1. PURPOSES AND LIMITATIONS

3 Disclosure and discovery activity in this action are likely to involve production of
4 confidential, proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may be
6 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
7 following Stipulated Protective Order. The parties acknowledge that this Order does not
8 confer blanket protections on all disclosures or responses to discovery and that the
9 protection it affords from public disclosure and use extends only to the limited
10 information or items that are entitled to confidential treatment under the applicable legal
11 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this
12 Stipulated Protective Order does not entitle them to file confidential information under
13 seal; prior Court order with reference to pertinent local rules will be followed when a
14 party seeks permission from the court to file material under seal.

15
16 2. DEFINITIONS

17 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
18 information or items under this Order.

19 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
20 generated, stored or maintained) or tangible things that qualify for protection
21 under Federal Rule of Civil Procedure 26(c).

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
23 as their support staff).

24 2.4 Designating Party: a Party or Non-Party that designates information or items that it
25 produces in disclosures or in responses to discovery as "CONFIDENTIAL."

26 2.5 Disclosure or Discovery Material: all items or information, regardless of the
27 medium or manner in which it is generated, stored, or maintained (including,
28

1 among other things, testimony, transcripts, and tangible things), that are
2 produced or generated in disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
4 the litigation who has been retained by a Party or its counsel to serve as an expert
5 witness or as a consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this action. House
7 Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
10 entity not named as a Party to this action.

11 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
12 action but are retained to represent or advise a party to this action and have
13 appeared in this action on behalf of that party or are affiliated with a law firm
14 which has appeared on behalf of that party.

15 2.10 Party: any party to this action, including all of its officers, directors, employees,
16 consultants, retained experts, and Outside Counsel of Record (and their support
17 staffs).

18 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
19 Material in this action.

20 2.12 Professional Vendors: persons or entities that provide litigation support services
21 (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or
23 medium) and their employees and subcontractors.

24 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
25 "CONFIDENTIAL."

26 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
27 Producing Party.
28

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected
3 Material (as defined above), but also (1) any information copied or extracted from
4 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
5 Material; and (3) any testimony, conversations, or presentations by Parties or their
6 Counsel that might reveal Protected Material. However, the protections conferred by
7 this Stipulation and Order do not cover the following information: (a) any information
8 that is in the public domain at the time of disclosure to a Receiving Party or becomes
9 part of the public domain after its disclosure to a Receiving Party as a result of
10 publication not involving a violation of this Order, including becoming part of the
11 public record through trial or otherwise; and (b) any information known to the
12 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
13 disclosure from a source who obtained the information lawfully and under no obligation
14 of confidentiality to the Designating Party. Any use of Protected Material at trial shall
15 be governed by a separate agreement or order.

16 The Parties expressly acknowledged that the binding effect of this Order is based
17 upon the Court's discretion in this proceeding, in view of the provision in Federal Rules
18 of Civil Procedure Rule 26(c). The protection of discovery or trial materials disclosed or
19 produced in other proceedings and contended to warrant protection shall be sought by
20 appropriate means, stipulations and court orders pertaining to these other proceedings.

21
22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations
24 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
25 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
26 later of (1) dismissal of all claims and defenses in this action, with or without prejudice;
27 and (2) final judgment herein after the completion and exhaustion of all appeals,
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1 rehearings, remands, trials, or reviews of this action, including the time limits for filing
2 any motions or applications for extension of time pursuant to applicable law.

3 4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
6 Party or Non-Party that designates information or items for protection under this Order
7 must take care to limit any such designation to specific material that qualifies under the
8 appropriate standards. The Designating Party must designate for protection only those
9 parts of material, documents, items, or oral or written communications that qualify – so
10 that other portions of the material, documents, items, or communications for which
11 protection is not warranted are not swept unjustifiably within the ambit of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations that
13 are shown to be clearly unjustified or that have been made for an improper purpose
14 (e.g., to unnecessarily encumber or retard the case development process or to impose
15 unnecessary expenses and burdens on other parties) expose the Designating Party to
16 sanctions.

17 If it comes to a Designating Party's attention that information or items that it
18 designated for protection do not qualify for protection, that Designating Party must
19 promptly notify all other Parties that it is withdrawing the mistaken designation.

20 5.2 Manner and Timing of Designations. Except as otherwise provided in this
21 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
22 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
23 must be clearly so designated before the material is disclosed or produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (e.g., paper or electronic documents, but
26 excluding transcripts of depositions or other pretrial or trial proceedings), that the
27 Producing Party affix the legend "CONFIDENTIAL" to each page that contains
28 protected material. If only a portion or portions of the material on a page qualifies for

1 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
2 by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents or materials available for
4 inspection need not designate them for protection until after the inspecting Party has
5 indicated which material it would like copied and produced. During the inspection and
6 before the designation, all of the material made available for inspection shall be deemed
7 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
8 copied and produced, the Producing Party must determine which documents, or
9 portions thereof, qualify for protection under this Order. Then, before producing the
10 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to
11 each page that contains Protected Material. If only a portion or portions of the material
12 on a page qualifies for protection, the Producing Party also must clearly identify the
13 protected portion(s) (e.g., by making appropriate markings in the margins).

14 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
15 the Designating Party identify on the record, before the close of the deposition, hearing,
16 or other proceeding, all protected testimony.

17 (c) for information produced in some form other than documentary and for any
18 other tangible items, that the Producing Party affix in a prominent place on the exterior
19 of the container or containers in which the information or item is stored the legend
20 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
21 protection, the Producing Party, to the extent practicable, shall identify the protected
22 portion(s).

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
24 to designate qualified information or items does not, standing alone, waive the
25 Designating Party’s right to secure protection under this Order for such material. Upon
26 timely correction of a designation, the Receiving Party must make reasonable efforts to
27 assure that the material is treated in accordance with the provisions of this Order.
28

Stipulated Protective Order

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
3 of confidentiality at any time. Unless a prompt challenge to a Designating Party's
4 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
5 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
6 Party does not waive its right to challenge a confidentiality designation by electing not
7 to mount a challenge promptly after the original designation is disclosed.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
9 by providing written notice of each designation it is challenging and describing the basis
10 for each challenge. Counsel must strictly follow the ten-day written notice and
11 conference requirement under LR 37-1, unless the Court directs otherwise. To avoid
12 ambiguity as to whether a challenge has been made, the written notice must recite that
13 the challenge to confidentiality is being made in accordance with this specific paragraph
14 of the Protective Order. The discovery dispute resolution steps under LR 37-1 through
15 37-4 must be followed. .

16 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
17 intervention, the Parties shall follow LR 37-1 through 37-4 re pre-filing Conference of
18 Counsel and the submission of Joint Stipulation, prior to the Designating Party's
19 filing/serving a motion to retain confidentiality under pertinent local rules and Court's
20 standing orders if applicable.

21 In addition, the Challenging Party may file a motion challenging a confidentiality
22 designation at any time if there is good cause for doing so, including a challenge to the
23 designation of a deposition transcript or any portions thereof. Any motion brought
24 pursuant to this provision must be in compliance with LR 37-1 through 37-4.

25 The burden of persuasion in any such challenge proceeding shall be on the
26 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
27 to harass or impose unnecessary expenses and burdens on other parties) may expose the
28 Challenging Party to sanctions. Unless the Designating Party has waived the

1 confidentiality designation by failing to file a motion to retain confidentiality as
 2 described above, all parties shall continue to afford the material in question the level of
 3 protection to which it is entitled under the Producing Party's designation until the court
 4 rules on the challenge.

5 6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 8 disclosed or produced by another Party or by a Non-Party in connection with this case
 9 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
 10 Material may be disclosed only to the categories of persons and under the conditions
 11 described in this Order. When the litigation has been terminated, a Receiving Party must
 12 comply with the provisions of section 13 below (FINAL DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a
 14 location and in a secure manner that ensures that access is limited to the persons
 15 authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 17 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
 18 may disclose any information or item designated "CONFIDENTIAL" only to:

19 (a) the Receiving Party's Outside Counsel of Record in this action, as well
 20 as employees of said Outside Counsel of Record to whom it is reasonably
 21 necessary to disclose the information for this litigation and who have signed the
 22 "Acknowledgment and Agreement to Be Bound" that is attached hereto as
 23 Exhibit A;

24 (b) the officers, directors, and employees (including House Counsel) of
 25 the Receiving Party to whom disclosure is reasonably necessary for this litigation
 26 and who have signed the "Acknowledgment and Agreement to Be Bound"
 27 (Exhibit A);
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(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or

1 order is subject to this Protective Order. Such notification shall include a copy of this
 2 Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by
 4 the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with the
 6 subpoena or court order shall not produce any information designated in this action as
 7 “CONFIDENTIAL” unless so ordered by the court from which the subpoena or unless
 8 the Party has obtained the Designating Party’s permission. The Designating Party shall
 9 bear the burden and expense of seeking protection in that court of its confidential
 10 material – and nothing in these provisions should be construed as authorizing or
 11 encouraging a Receiving Party in this action to disobey a lawful directive from another
 12 court.

13
 14 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
 15 THIS LITIGATION

16 (a) The terms of this Order are applicable to information produced by a Non-
 17 Party in this action and designated as “CONFIDENTIAL.” Such information produced
 18 by Non-Parties in connection with this litigation is protected by the remedies and relief
 19 provided by this Order, unless ordered otherwise by the Court. Nothing in these
 20 provisions should be construed as prohibiting a Non-Party from seeking additional
 21 protections.

22 (b) In the event that a Party is required, by a valid discovery request, to produce a
 23 Non-Party’s confidential information in its possession, and the Party is subject to an
 24 agreement with the Non-Party not to produce the Non-Party’s confidential information,
 25 then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-Party that
 27 some or all of the information requested is subject to a confidentiality agreement
 28 with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the

obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court, and such agreed incorporation shall not take effect until the Court gives its approval.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with relevant local rules and pertinent court orders. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or

1 destroy such material. As used in this subdivision, "all Protected Material" includes all
2 copies, abstracts, compilations, summaries, and any other format reproducing or
3 capturing any of the Protected Material. Whether the Protected Material is returned
4 or destroyed, the Receiving Party must submit a written certification to the Producing
5 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
6 deadline that (1) identifies (by category, where appropriate) all the Protected Material
7 that was returned or destroyed and (2) affirms that the Receiving Party has not retained
8 any copies, abstracts, compilations, summaries or any other format reproducing or
9 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
10 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
11 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
12 expert reports, attorney work product, and consultant and expert work product, even if
13 such materials contain Protected Material. Any such archival copies that contain or
14 constitute Protected Material remain subject to this Protective Order as set forth in
15 Section 4 (DURATION).

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Stipulated Protective Order

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
2

3 DATED: _____

4 Attorneys for Plaintiff
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6 DATED: _____

7 Attorneys for Defendant
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10 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**
11



12
13 DATED: November 08, 2012

14 HON. Jean P. Rosenbluth

15 United States Magistrate Judge
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Stipulated Protective Order

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print full name], of _____
 [print or type full address], declare under penalty of perjury that I have read in its
 entirety and understand the Stipulated Protective Order that was issued by the United
 States District Court for the Central District of California on _____ [date]
 in the case of *Altinex Inc. v. Evervue USA, Inc.*, 12-sacv-1068-JST(JPRx). I agree to
 comply with and to be bound by all the terms of this Stipulated Protective Order and I
 understand and acknowledge that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any
 manner any information or item that is subject to this Stipulated Protective Order to any
 person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone number]
 as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State signed: _____

Printed name: _____

Signature: _____

Stipulated Protective Order